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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Haiti

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Professor Marco Tulio Bruni Celli (Venezuela), Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti, in accordance with paragraph 13 of Commission on Human Rights resolution 1994/80 of 9 March 1994 and Economic and Social Council decision 1994/266 of 25 July 1994.

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ANNEX

Interim report on the situation of human rights in Haiti submitted by the Special Rapporteur of the Commission on Human Rights pursuant to Commission resolution 1994/80 and Economic and Social Council decision 1994/266

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I. INTRODUCTION

A. Mandate of the Special Rapporteur

1. At its fiftieth session, the Commission on Human Rights considered the report of the Special Rapporteur (E/CN.4/1994/55) and, on 9 March 1994, adopted without a vote resolution 1994/80 entitled "Situation of human rights in Haiti". By this resolution, the Commission decided to extend for a further year the mandate of the Special Rapporteur, Dr. Marco Tulio Bruni Celli, and requested him to submit an interim report to the General Assembly at its forty-ninth session and a final report to the Commission on Human Rights at its fifty-first session. The Commission decided to continue considering the situation of human rights in Haiti at its fifty-first session under the agenda item "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories".

2. In its decision 1994/266 of 25 July 1994, the Economic and Social Council approved the requests contained in Commission resolution 1994/80 and extended the mandate of the Special Rapporteur.

3. The recommendations and measures approved by the Commission in its resolution 1994/80 guided the Special Rapporteur in his investigations and in the preparation of this report. For technical reasons the present report was finalized on 23 September 1994; relevant additional information will be reflected in the Special Rapporteur's oral presentation to the Third Committee.

B. Earlier work by independent experts and by the Special Rapporteur

4. The situation of human rights in Haiti in recent years has been discussed and described in reports by the independent experts and the Special Rapporteur appointed by the Commission. In addition to presenting information on the continued violation of human rights, the reports have also pointed to the social, economic, cultural and political problems in Haitian society that have particularly hindered the development of the democratic process and basic democratic institutions and, consequently, respect for human rights and fundamental freedoms.

5. The reports received and considered by the Commission on Human Rights during the period 1981-1986 were summarized in the report which the Special Rapporteur submitted to the Commission at its forty-third session, in 1987 (E/CN.4/1987/61). In addition to synthesizing previous reports, that report provided an overview of economic and social conditions in Haiti and the human rights situation in general as well as an analysis of relevant institutional aspects such as the constitutional system, legislation, the prison system and the administration of justice.

6. From 1988 to 1991, the reports submitted to the Commission dealt with the general situation in Haiti, particularly the political instability which followed the end of the Duvalier regime in 1986, problems in the establishment

and functioning of democratic institutions, and the sociopolitical environment surrounding the grave human rights situation which has prevailed since then. The reports denounced the suppression and arbitrary suspension of fundamental civil rights, particularly the freedoms of expression, opinion, press and assembly as well as trade union freedoms and legal guarantees. They also discussed the frequent instances of arrests without guarantees. Also analysed were rural and urban violence; the deplorable prison conditions, systematic torture and ill-treatment; the denial of political rights; and, in general, continued violations of the rights enunciated in the Haitian Constitution and in the human rights declarations and treaties to which Haiti is a party.

7. The report which the Special Rapporteur submitted to the Commission at its forty-eighth session in his capacity as independent expert (E/CN.4/1993/50 and Add.1) provided a detailed account of the country's history and analysed its political, social and economic characteristics. The report also gave an overview of the situation in Haiti during 1991 which included criticisms both of the situation under President Aristide's Government beginning in February and of the situation following the coup d'état on 29 September of that year. One chapter was devoted to the legal background and institutional aspects of human rights. Special emphasis was placed on external cooperation and the international community's efforts to restore democracy.

8. The report which the Special Rapporteur submitted to the Commission at its forty-ninth session (E/CN.4/1993/47) reviewed the principal human rights violations in Haiti in 1992, with special emphasis on: repression and violence; violation of the right to life, liberty and security of person; violation of the right to protection against arbitrary arrest and detention and against torture and other cruel, inhuman or degrading treatment; and violation of the right to freedom of opinion and expression and the right to freedom of assembly and association. A special chapter was devoted to the situation of the boat people and another to institutional obstacles to the protection of and respect for human rights, and a description and detailed analysis was provided of the negotiations which had been launched in Haiti largely as a result of pressure by the international community and certain individual countries with a view to the restoration of democracy and the reinstatement of Aristide as President of the Republic.

9. In his report to the Commission at its fiftieth session (E/CN.4/1994/55), the Special Rapporteur reported on the human rights violations that had occurred in Haiti since his previous report. One chapter of the report was devoted to the Haitian political process with a detailed analysis of the main domestic players, including the military, President Aristide and his supporters, Parliament and the political parties, the Catholic church and the Haitian middle class, and to the role of the international community. The Special Rapporteur also reported at length on the difficult negotiating process, with particular emphasis on the Governors Island Agreement (see A/47/975-S/26063, para. 5), its refutation by the Haitian military and the subsequent suspension and reimposition of sanctions by the international community.

C. Activities of the Special Rapporteur under his mandate

10. In May 1994, the Special Rapporteur travelled to Geneva to attend the meeting of special rapporteurs, representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights, and at the same time held consultations with respect to his mandate on Haiti. During this time, he met with the Chargé d'affaires of the Permanent Mission of Haiti to the United Nations Office at Geneva, Mr. Joseph Philippe Antonio, Mr. Alan Kessel of the Permanent Mission of Canada, Mr. Steven Wagenseil of the Permanent Mission of the United States of America, the Director of the Regional Bureau for the Antilles and the Caribbean at the Office of the United Nations High Commissioner for Refugees (UNHCR), Mr. Cheseke, and members of his staff, Mr. Patrick Berner of the International Committee of the Red Cross and Ms. Isabel Scherer of Amnesty International.

11. In September 1994, the Special Rapporteur travelled to Washington and New York in order to talk to senior officials of the United Nations, the Organization of American States, the United States Department of State and non-governmental organizations working on the Haiti issue, in order to learn, first hand, the current political and human rights situation in Haiti.

12. On 9 September 1994, the Special Rapporteur met with Ambassador Antoine Blanca, Permanent Representative of France to the Organization of American States, and the Executive Secretary of the Inter-American Commission on Human Rights and members of her staff dealing with the issue of Haiti. On 12 September 1994, the Special Rapporteur met with the following persons at the United States Department of State: Ms. Melinda Kimble, Deputy Assistant Secretary, Bureau of International Organization Affairs; Ambassador Brunson McKinley, Acting Assistant Secretary, Bureau of Population, Refugee, and Migration Affairs; Ambassador Jack Leonard, Head of the Haiti Task Force and Mr. John Shattuck, Assistant Secretary for Democracy, Human Rights and Labor. On 13 September 1994, the Special Rapporteur met with Mr. José Miguel Vivanco, Executive Director of Human Rights Watch/Americas and Ms. Gretta Tovar-Siebentritt, Research Associate. He also met with Mr. Christopher Thomas, the Acting Secretary-General of the Organization of American States.

13. During his visit to Washington, the Special Rapporteur was able to meet, on 13 September, with President Jean-Bertrand Aristide, at which time the President gave his own assessment of the situation in Haiti and his views and opinions regarding the negotiations, the agreements reached and their implementation and prospects; in particular, he set out the highlights of his programme for reconstruction and national unity.

14. On 20 September, the Special Rapporteur returned to Washington in order to address formally the Inter-American Commission on Human Rights at the beginning of its autumn session.

15. In New York, the Special Rapporteur spoke to the Permanent Representatives to the United Nations of the countries which form the Friends of the Secretary-General for Haiti and whose officials he had not seen in Washington, senior officials of the United Nations and representatives of non-governmental

organizations. On 15 September, he met with H.E. Mr. Enrique Tejera-París, Ambassador of Venezuela; on 16 September, H.E. Mr. Emilio J. Cárdenas, Ambassador of Argentina and on 19 September with H.E. Mrs. Louise Frechette, Ambassador of Canada. On 15 September, the Special Rapporteur met with representatives of the Lawyers Committee for Human Rights and on 22 September with the representatives of Amnesty International.

II. THE HUMAN RIGHTS SITUATION IN HAITI

A. Introduction

16. The human rights situation in Haiti deteriorated gravely in 1994. The number and brutality of violations increased dramatically, with reports of summary executions, enforced disappearances, torture, arbitrary arrest and violations of the right to freedom of opinion and expression widely reported. Most disturbing to the Special Rapporteur was a new phenomenon seen in Haiti in 1994: the emergence of politically motivated rape and the use of sexual abuse as an instrument of repression and political persecution.

17. The deterioration in the human rights situation, in fact, began immediately following the signature of the Governors Island Accord in New York on 3 July 1993. As the Special Rapporteur noted in his last report (E/CN.4/1994/55), when the military authorities decided not to comply with the Governors Island Accord, together with paramilitary forces and armed civilian bands, they embarked on a deliberate campaign to sow terror amongst the civilian population. As a diplomatic solution appeared increasingly remote, human rights violations continued unimpeded.

18. According to a report by the Inter-American Commission on Human Rights on its visit to Haiti from 16 to 20 May 1994,

> "Most of the violations reported follow a systematic pattern of repression indicative of a political plan to intimidate and terrorize the people of Haiti, especially sectors that support President Aristide or have expressed themselves to be in favour of democracy in Haiti." 1/

19. The Special Rapporteur is also concerned about reports indicating the re-emergence in May 1994 of the tontons macoutes, the paramilitary thugs associated with the Duvalier regime.

20. The problem of displaced persons in Haiti (maroons) is another phenomenon resulting from the deteriorating human rights situation. Numerous political activists, supporters of President Aristide and community leaders are living as fugitives in their own country, forced to abandon their homes and families and go into hiding, in fear of Haitian security forces and their civilian supporters. According to one source, it is estimated that the number of such persons range from 100,000 to 300,000. 2/

21. The Inter-American Commission on Human Rights expressed particular concern about this problem, stating that "it had received convincing information that

the number of displaced persons continues to increase at an alarming rate ...". 3/

22. The Special Rapporteur takes note in this, the United Nations Year of the Family, of the negative consequences and hardship such forced displacements impose on the rights of the family. According to a report by Human Rights Watch/Americas, "massive internal displacement is an important cause of homelessness, increased impoverishment and misery in Haiti. The departure of the principal income-earner in the family often results in an abrupt cut-off of the family's means of subsistence. If the departure was preceded by arrest, as is often the case, then the family most likely spent its savings, and even borrowed money, to secure the release of the detainee. In other cases, displacement is preceded by the ransacking and even burning of the home, so that the family is left homeless". 4/

23. Violations of human rights in Haiti frequently take place under the guise of military operations in search of terrorist groups and arms. During this time, houses are burned to the ground and looted, cattle is stolen or slaughtered and many persons are forced to pay a ransom to be spared. Extortion and the destruction of property and livelihood, exacts an even greater toll on an already impoverished population.

24. The human rights situation in Haiti is rendered even more dramatic by the fact that the perpetrators carry out such violations with total impunity. The Haitian judiciary is completely ineffective in preventing or punishing human rights violations and victims have virtually no redress within the Haitian legal system.

B. Violation of the right to life, liberty and security of person

25. Violations of the right to life, liberty and security of person increased dramatically in Haiti in 1994. Reports of politically motivated killings and violations of the right to physical integrity were widespread during this period. Particularly despicable is what the International Civilian Mission United Nations/Organization of American States terms the "emergence of rape as a means of political repression". 5/

26. As in the past, victims come mainly from the shanty-towns. Members of popular organizations and all those who support or are perceived to support a return of the constitutionally elected president, as well as their children, spouses and other family members, are particularly targeted. The Special Rapporteur has received reliable information indicating that severely mutilated bodies have been left on the streets of Port-au-Prince, the purpose of which is to terrorize the population. Those responsible for such acts include members of the Haitian armed forces, their civilian accomplices, known as attachés, and

members of FRAPH,* a paramilitary group. Such individuals continue to carry out these crimes with total impunity.

27. During 1994, women were targeted for abuse in ways and for reasons that men were not. According to a report by Human Rights Watch and the National Coalition for Haitian Refugees,

> "Uniformed military personnel and their civilian allies have threatened and attacked women's organizations for their work in defense of women's rights and have subjected women to sex-specific abuse ranging from bludgeoning women's breasts to rape. Military forces and attachés use rape and sexual assault to punish and intimidate women for their actual and imputed political beliefs, or to terrorize them during violent sweeps of pro-Aristide neighbourhoods. Rape also functions as punishment for the political beliefs and activities of the victims' male relatives." 6/

28. The Special Rapporteur deplores this abhorrent practice, in which victims have been as young as eight years old.

29. The International Civilian Mission in Haiti reports that since the recommencement of its activities on 31 January 1994 until 6 July 1994, just prior to the order of expulsion from the country by the military authorities on 11 July, 74 cases of rape were brought to the Mission's attention, of which 52 were determined to be of a political nature. 7/ A number of the victims were reported to be close relatives of members of popular organizations. This may be compared with only three cases of rape brought to the Mission's attention during all of 1993. 5/

30. During the same period of 31 January to 6 July 1994, the International Civilian Mission had received information on 340 cases of summary executions and suspect deaths, 51 human rights abuses against children, 23 resulting in their deaths, and 133 cases of abduction or enforced disappearance. 7/

31. Illustrative of the dramatic increase in reports of human rights violations are the following figures: from 31 January through 31 May 1994, 1,350 people came to the offices of the International Civilian Mission. However, in June alone, another 1,143 visitors were received. 7/

1. Summary or arbitrary killings

32. The following are among the cases of summary or arbitrary killings reported to have occurred in 1994 which were brought to the Special Rapporteur's attention.

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* The Front révolutionnaire pour l'avancement et le progrès haïtien (FRAPH) was established in September 1993 By the end of July 1994 it had been renamed Front révolutionnaire armé du peuple haïtien (see A/48/532/Add.3, para. 20).

33. On 10 March, Daddy Pierre, an Aristide supporter, was killed in Cité Soleil by some 10 armed civilians, including members of FRAPH, and a soldier. He is reported to have been beaten, and killed with a machete; his face was then sliced off with the machete. 8/

34. In the shanty-town of Raboteau, Gonaïves, Department of Artibonite, on 22 April 1994, between 15 and 20 residents were arbitrarily executed by members of the army, together with members of FRAPH, a paramilitary group. According to information received by the Special Rapporteur, the army and members of FRAPH surrounded the town of Raboteau and then opened fire with machine-guns as frightened residents fled towards the beach to try and escape in small boats. Another group of soldiers and armed men reportedly fired on the fleeing villagers from the water, at Raboteau residents who had been sleeping in small canoes and fishermen in their boats. It is said that some bodies, which had apparently been dumped dead into the sea, washed up ashore; members of FRAPH are said to have refused to allow family members to bury them. It was further reported that a number of persons were wounded in the attack, but that they failed to seek medical attention out of fear of being identified. Reportedly, there was a massive exodus from the town of Raboteau following these events.

35. The above incident is said to have taken place following the unsuccessful attempt on 18 April 1994 by the military to locate Amio Métayer, a well-known local activist. Failing to find him at home, soldiers are said to have burned his house to the ground, ransacked other homes, beaten some villagers and arrested others, including Métayer's father and sister. Although the villagers were released on 19 April, the army returned to Raboteau on 22 April, accompanied by members of FRAPH. 9/

36. On 23 May 1994, the bodies of four political activists were found shot dead in the shanty-town of Cité Soleil. One was a member of the Association tet Ansam Cité Soleil, two were members of the Association des jeunes de Cité Soleil and the fourth was a member of the Alliance des démocrates patriotes revolutionnaires haïtiens. A number of other residents of Cité Soleil are said to have been the victims of attacks on the night of 22 May, and at least six persons were wounded. According to an investigation carried out by members of the International Civilian Mission, those responsible for the killings were heavily armed civilians. These killings are indicative of the systematic attempt to eliminate members of popular organizations in favour of the return of a constitutional order. 10/

37. On 29 June 1994, in Jérémie, the home of Serge Paul, coordinator and leader of the Confederation of Haitian Workers, was attacked with grenades. His two children, four and five years old, died as a result of the attack and the third was seriously wounded. Serge Paul and his wife, as well as several leaders of the Confederation of Haitian Workers, were reportedly imprisoned. 11/

38. On 12 July, the bodies of several unidentified men were found in Morne-à-Bateau, some 20 km south of Port-au-Prince. The bodies, which all had bullet holes in them, had been buried in three graves. A local resident says that he was woken up and forced to help bury the bodies. According to one source, the dead were part of a group of 21 Haitians arrested by the local section chief. Human rights organizations in Haiti have reported that people

they have interviewed claim that the massacre took place following celebrations of the victory of Brazil in the World Cup football match against the Netherlands on 9 July. Apparently, the celebrations turned into a pro-Aristide demonstration and the military then attacked the participants. 12/

39. In July 1994, following the departure of the International Civilian Mission from Haiti, Father Hugo Triest, a Belgian Priest and human rights activist, together with other colleagues, was detained at gunpoint on three occasions by men in plain clothes who reportedly objected to his human rights work. 13/

40. On 28 August 1994, Father Jean-Marie Vincent was shot dead in front of the residence of the Montfortain religious order in the Turgeau area of Port-au-Prince. Father Vincent was a close supporter of Father Aristide, and immediately prior to his death was the director of the Fondation haïtienne pour le développement économique et social (FONADES). He was also the founder of a group of missionaries which organized a peasant movement called Tet Ansam or Tête Ensemble. It was reportedly believed that Father Triest was targeted by the security forces because of his close association with President Aristide. 13/

41. More violence by the Haitian police forces and their civilian supporters occurred on 19 and 20 September 1994 when they attacked crowds demonstrating for the return of President Aristide and welcoming the arrival of United States troops. On 20 September, a crowd formed, apparently spontaneously, and ran alongside United States army vehicles taking troops in the direction of the Port-au-Prince airport. About half an hour later, police appeared firing their guns not only into the air but also into the crowd, reportedly killing one person. It has also been alleged that police attacked demonstrators with crowbars, killing one person. 14/

2. Enforced disappearances

42. Despite a high level of human rights violations in the past, there were relatively few reported cases of enforced disappearance in Haiti. However, the increasing number of disappearances and testimonies from persons who later reappeared, all revealed a similar pattern of abduction, interrogation and torture in a secret detention place. Reportedly, victims are taken from their home or in the street, frequently beaten, forced into a vehicle by armed men, and taken to an unknown destination where they are interrogated about their political or union activities and their relationships with other activists. Many of the victims have been members of popular organizations or relatives of such members, or have close ties with a political organization or union. The aim of their abductors is to obtain information on the activities or members of these organizations, as well as to terrorize the popular movements in favour of the return of President Aristide. While they are detained, victims are reported to be subjected to torture and ill-treatment and sometimes denied food and water for 48 to 72 hours. After several days of detention in secret detention places, victims are sometimes released. However, in many cases the persons who have been disappeared are executed or die as a result of ill-treatment. The perpetrators have been identified by witnesses or victims as members of the army, the police and FRAPH.

43. The current rate and pattern of enforced disappearances in Haiti would indicate that it has become a systematic practice and is part of the overall increase in human rights violations.

44. The International Civilian Mission reported that between 31 January and 6 July alone, they registered 131 cases of enforced disappearances. 7/

45. Among the cases brought to the attention of the Special Rapporteur is that of six members or sympathizers of the Organisation populaire 17 septembre (names given) who disappeared on 25 March 1994 when they left their homes to attend a meeting held by OP-17. At least two of the persons were reportedly abducted by members of FRAPH. 15/

46. On 19 April, Dumez Schneider and Harold Fontaine, members of the Forces populaires de Delmas, a grassroots organization, were accompanied by another member of the organization when they were stopped in the street by four armed civilians who forced them aboard a vehicle. Their companion was able to escape. The mutilated body of Harold Fontaine was found on 22 April 1994 and identified by his family. The whereabouts of Dumez Schneider remains unknown. 16/

47. On 14 May, a delegate of the Coordination des comités de quartier was leaving his house, when four persons forced him into their vehicle, spraying a substance into his eyes to blind him. He was reportedly held in a secret detention centre for seven days and subjected to torture. 17/

48. On 19 June 1994, Janne Thiocyanate disappeared after being abducted from her apartment in Port-au-Prince by eight armed men, some reportedly in military uniform and some in civilian clothes, who are said to have forced her into a black car. Janne Thiocyanate has been an active opponent of the de facto government and is the wife of Levius Thiocyanate, who is a political refugee in the United States. Her abduction is said to have taken place after several interviews given by her husband to the radio programme "Voice of America" were broadcast in Haiti. 18/

49. A number of other cases were brought to the Special Rapporteur's attention, but it is not possible to reproduce all the information in full in the present report.

3. Rape

50. The Special Rapporteur would now like to turn to the issue of politically motivated rape. The International Civilian Mission reported that between 31 January and 6 July 1994, 74 cases of rape were brought to its attention, 20 in the month of May alone, mostly in the lower-income neighbourhoods of Port-au-Prince. The Special Rapporteur cannot but condemn this particularly heinous crime, in which victims have been subjected to group attacks, and neither pregnant women nor children are spared.

51. According to information received by the Special Rapporteur, in a typical scenario of a politically motivated rape, armed individuals, often soldiers, attachés or members of FRAPH, break into the home of a political militant they

have wanted to apprehend. In his absence, and faced with the inability of the family to indicate where to find him, the aggressors attack the sister, daughter or cousin of the person. The military forces and their civilian supporters use rape as a means to punish and intimidate women for their real or perceived political beliefs or those of their relatives, and in order to instil terror in the population, especially those believed to support the return of President Aristide.

52. Amongst the cases brought to the attention of the Special Rapporteur are the following.

53. On 19 February 1994, 15 armed men in civilian clothes forced their way into the home of a supporter of President Aristide in Port-au-Prince. In his absence, the men interrogated his father, then killed him, while several others raped his 14-year-old sister. On 2 March 1994, three members of FRAPH forced their way into the home of an activist of the peasant association of Plateau Central, killing him while two others raped his wife. 19/

54. The International Civilian Mission has reported a case in which a relative of a political militant in Port-au-Prince was raped by eight armed individuals. At the end of March in Port-au-Prince, two armed civilians raped two girls, aged 10 and 12, in front of their uncle. 5/

55. On 20 March 1994, a 13-year-old girl was reportedly raped by a soldier in the 4th communal section of Limbé. The girl's father, a local Lavalas leader in Cap Haïtien in 1991, may have been the original target. 20/

56. Also in March 1994, the Special Rapporteur was informed that in one raid carried out by the army on shanty-town areas of Port-au-Prince, some 40 women were raped, including an eight-year-old girl and a 55-year-old woman. In only one instance was the victim reportedly raped by fewer than three men. 21/

57. The Inter-American Commission on Human Rights reported on testimony it had taken during its visit to Haiti from 16 to 20 May 1994, in which a four-year-old boy was abducted in March 1994. Allegedly, three armed men were searching for the boy's father, who is a member of a political organization for young people in Cité Soleil. Not able to find the man, the armed men raped his wife and abducted the boy. The boy was found unharmed four days later at a radio station. 1/

58. As stated in the report of Human Rights Watch on rape in Haiti,

> "Documenting rape by police and soldiers is especially difficult, given the climate of fear and repression under which most women's rights activists operate, as well as the rape victims' fear of reprisal ...". 22/

59. Furthermore, most victims are poor and do not seek medical attention, which they can ill afford. Therefore, evidence to support a rape allegation is very difficult to collect and is another obstacle to women seeking redress for rape.

60. These acts of violence committed by the armed forces, the police and their civilian accomplices constitute violations of article 3 of the Universal

Declaration of Human Rights; article 4, paragraph 1, of the International Covenant on Civil and Political Rights; article 4 of the American Convention on Human Rights and article 19 of the Haitian Constitution.

C. Violation of the right to protection against arbitrary arrest and detention

61. Wide-scale arbitrary arrests and detention, including of children, almost always accompanied by torture or other ill-treatment, continues to be among the most persistent violations carried out in Haiti. Arrests are made without a warrant, and despite the provisions of the Haitian Constitution which stipulate that a detainee must be brought before a judge within 48 hours, this is routinely ignored. The de facto authorities are said to systematically deny detainees access to legal counsel or to members of the International Civilian Mission. Detainees are routinely beaten upon arrest, some so severely that they require hospitalization. Prison conditions are very harsh and prisoners not only lack basic hygienic facilities, but are denied food, water and medical treatment. The threat of physical violence is also used by soldiers and the police in order to extort a ransom from detainees or their families.

62. According to the International Civilian Mission, between 31 January and 6 July 1994, they received information on several hundred cases of illegal arrest and arbitrary detention, followed by ill-treatment. 7/

63. According to the report by the Inter-American Commission on Human Rights, the pattern of arbitrary arrests frequently occurs as follows:

> "Actual military campaigns where army units, assisted by FRAPH and other paramilitary groups, surround and burst into certain areas under the pretext of combatting subversive groups, indiscriminately beating residents and committing acts of arson, destruction and theft, followed by arbitrary detentions". 1/

64. On 4 and 5 March 1994, members of FRAPH and armed civilians are said to have invaded a neighbourhood in Saut d'Eau reputed to be pro-Aristide, beating and arresting residents, shooting into the air and looting houses. The local justice of the peace was reportedly among those mistreated. Dozens of people are said to have fled the area following the raid. 23/

65. On 5 March 1994, Jacques Dorcéant, a supporter of President Aristide, was arrested by members of the Haitian military and taken to the Anti-Gang Investigation Service. Two other persons were arrested at the same time and taken to the Anti-Gang Service, one of whom is said to have been beaten severely. Reportedly, 12 days after their arrest they had still not been brought before a judge. 24/

66. On 7 March 1994, Johnson Aristide, Assistant Secretary-General of the Organisation Soleil de la Justice pour la liberation du peuple haïtien, was arrested by police, together with armed civilians. He was reportedly interrogated about his political activities in a secret detention centre during

which time he was subjected to ill-treatment before being released on 15 March. 24/

67. On 10 April 1994, Belizaire Fils-Aimé was arbitrarily arrested at his home in Le Borgne, Department of the North, by members of the military and taken to the military barracks at Limbé, the district capital, where he is said to have been held in secret detention and subjected to beatings, to the point that he required medical attention. Mr. Fils-Aimé was elected mayor of Le Borgne as the candidate for the National Front for Change and Democracy, the party coalition that supported President Aristide in the 1990 elections. The following day, 11 April, three military men accompanied by three attachés are said to have forced their way into his home in the presence of a judge of the peace. On 12 April, the same thing was done to his parents' home, and his in-laws and other family members were interrogated and imprisoned for 48 hours before being released. 25/

68. On 24 April 1994, five street children between the ages of 14 and 18 years old were reportedly arrested in the Bicentenaire area of Port-au-Prince and held until 2 May 1994. During their detention they are said to have been subjected to ill-treatment and were together with 15 or 20 other street children also arbitrarily detained. 26/

69. On 29 April 1994, a member of the Front national pour le changement et la démocratie was arbitrarily arrested on a street in Port-au-Prince by three armed civilians. He was beaten, forced aboard a vehicle and taken to the local police station. He was imprisoned for a number of days before being taken before a judge, who subsequently released him. After his release, he was hospitalized for treatment suffered during his detention. 27/

70. On 7 June 1994, Victor Edmonds, a Canadian citizen working for a humanitarian aid organization, was arrested by a group of armed civilians and persons identifying themselves as policemen and imprisoned. Despite producing identity papers, he was placed in a cell and left for 48 hours without food or water, during which time he was beaten. Following the intervention by the Embassy of Canada, Mr. Edmonds was released; he had two broken teeth, a swollen face and his shirt was stained with blood. 28/

71. On 19 July 1994, uniformed police and others in civilian clothing burst into the headquarters of the Parti nationaliste démocratique, arresting several members of the Camp démocratique 16 décembre. 29/

72. On 31 July 1994, André Thélusma and another Haitian were arrested in Port-au-Prince as they accompanied three United States journalists through a gate at the Port-au-Prince airport into a so-called "strategic zone". The two Haitians were assisting the journalists as guide/chauffeur and interpreter, respectively. The journalists were reportedly deported, and the two Haitians detained at Fort Dimanche army barracks before being released several days later. 30/

73. On 9 August 1994, Louis Octave Dorvilier, Assistant Secretary-General of the Confederation of Haitian Workers, was reportedly arbitrarily arrested and subjected to ill-treatment by four unidentified armed men, who are said to have

threatened his life and that of other members of the organization before releasing him. 31/

74. On 17 August 1994, Gardy Le Blanc is said to have been arbitrarily arrested by soldiers from the Miragoâne military barracks at his home in Miragoâne, Grande-Anse Department, during a search of his house. A piece of paper with President Aristide's name on it was found. He was reportedly taken to the local military barracks where he is said to have been beaten and detained. It was further reported that a number of arbitrary arrests were carried out in Haiti in early August in the Miragoâne area, Jacmel and Les Cayes. Five high school students, accused of being Communists, were reportedly amongst those detained. 32/

75. These arbitrary detentions constitute violations of article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights, article 17 of the American Convention on Human Rights and article 24 of the Haitian Constitution, which established that the State guarantees the freedom of the individual.

D. Violation of the right to protection against torture and other cruel, inhuman or degrading treatment or punishment

76. Torture and ill-treatment by the military, police and civilians working with them is widespread and systematic in Haiti.

77. Amongst the cases of torture and ill-treatment brought to the attention of the Special Rapporteur are the following.

78. On 24 March, Molière Jean François, a member of a popular organization known as KIREPS, was arrested in St. Marc, Department of Artibonite. He was reportedly imprisoned for 20 days during which he was subjected to frequent beatings and was never brought before a judge. 33/

79. On 31 March, in Miragoâne, FRAPH members, accompanied by several attachés, arrested Brunel Guerrier as he was taking part in a rara band called Dola. They accused Guerrier, a member of the Committee to Defend the Interests of Miragoâne, of encouraging the band to sing political songs. After beating him badly, the men released him. The following day a truckload of soldiers and attachés arrived at his home, where they discovered pictures of President Aristide and, failing to find Mr. Guerrier, the men beat his wife and children. 33/

80. During the night of 12 to 13 April 1994, in Carrefour, five armed civilians who were reportedly looking for Jean-Marie Dericin, a known supporter of President Aristide, forced their way into the house of his sister. In his absence, they ransacked the house and violently beat his nephew Kindy, two years old, and his niece Rosemarie, five months old, as well as their nurse. As a result, Kindy died several hours later and Rosemarie the next day. 34/

81. Another case concerned a woman, Alerte Balance, a supporter of President Aristide, who was attacked by members of FRAPH who reportedly hit her

in the neck with a machete and slashed her body. Although she was left for dead in the mass grave of Titanyen, she managed to survive. 35/

82. The Special Rapporteur also received information that in the late summer of 1994, the military commander in Les Cayes severely beat and tortured a person he had detained cutting off the man's ear and forcing him to eat it, and then carving his initials in the victim's flesh. 36/

83. These acts of torture and physical punishment constitute violations of article 5 of the Universal Declaration of Human Rights; article 7 and article 10, paragraph 1, of the International Covenant on Civil and Political Rights; article 5 of the American Convention on Human Rights; and article 25 of the Haitian Constitution.

E. Violation of the right to freedom of assembly and association

84. The Haitian military authorities have continued to engage in human rights violations with a view to prohibiting groups from exercising their right to freedom of assembly and association.

85. During a visit to Haiti from 16 to 20 May 1994, the Inter-American Commission on Human Rights concluded that the exercise of the right of assembly "does not exist for those who support a return to democracy. When groups of individuals try to exercise this right they are arrested and brutally beaten by members of the military and police force, and accused of organizing meetings in support of president Jean-Bertrand Aristide. In a recent incident, 20 participants were arbitrarily arrested at a meeting for legal training organized by the diocese in Hinche, Department of the Centre, on April 29, and accused of being terrorists". 1/

86. On 14 February 1994, in Petit Goâve, several dozen persons were arbitrarily arrested by the military, imprisoned in the Faustin Soulouque prison and interrogated about their political activities. One of them, a 21-year-old student, a member of Kodinasyon Rezistans Lavalas, was accused of organizing Lavalas meetings in Petit Goâve, and subjected to severe torture while in detention. 37/

87. On 3 March 1994, a member of the Rassemblement paysan in Pérodin, Department of Artibonite, was accused of organizing a meeting to prepare for the return of President Aristide, arrested by a police auxiliary and taken to the home of the section chief where he was subjected to ill-treatment. 37/

88. The International Civilian Mission noted that the rights to freedom of expression and assembly are denied to the majority of the population while a minority exercises them fully. It called upon the Haitian Armed Forces to guarantee these rights impartially to all Haitians. 37/

89. The Haitian authorities are thus systematically violating article 20 of the Universal Declaration of Human Rights; article 21 of the International Covenant

on Civil and Political Rights; articles 15 and 16 of the American Convention on Human Rights; and article 3 of the Haitian Constitution.

F. Violation of the right to freedom of opinion and expression

90. The right to freedom of opinion and expression has been severely curtailed in Haiti since September 1991. Print and broadcast journalists have continued to be subjected to threats and acts of intimidation with a view to preventing them from going about their work, especially when covering events in which human rights violations have taken place. This situation worsened in 1994, in particular following the adoption on 31 July 1994 of Security Council resolution 940 (1994) of 31 July 1994. "On 1 August 1994 the Ministries of the Interior and Information addressed a warning to the local press, inviting it not to publish alarmist or tendentious news and not to make itself the instrument of foreign propaganda under penalty of temporary suspension. On 12 August 1994 the press was forbidden to publish without prior authorization information or statements issued by foreign embassies or their press services in Haiti." (S/1994/1012, para. 5).

91. According to the Inter-American Commission on Human Rights, "Information received would confirm restrictions endured by representatives of the press and radio in Haiti. These have led to self-censorship of the media to the detriment of its functions of keeping the Haitian public informed". 1/

92. The International Civilian Mission reports that on 1 February, armed civilians were looking for a former journalist at Radio Inter and political activist and, failing to find him, abducted his brother. On 4 February, during a demonstration organized by FRAPH, participants attacked journalists they accused of being "Lavalas" and "Communists". A journalist from Radio Caraïbes was hit in the face by a body guard of a FRAPH leader, and on 21 March armed men, who were looking for this same journalist, raped his sister and beat his two cousins. In Thiotte (Department of the South-East), a journalist was arrested and beaten for having allegedly participated in political activities. The International Civilian Mission further reports that although a number of other journalists have been subjected to acts of intimidation, they did not want the Mission to use their testimony, and admitted to the use of self-censorship in order to protect themselves. 38/

93. In early March 1994, 13 young men were arrested by members of the military in Belvai, Léogane, and accused of being Lavalassiens (supporters of President Aristide) and distributing leaflets. 39/

94. On 5 March 1994, Etzer Etienne, a reporter at Radio Nationale during the Government of President Aristide, was arrested in Port-au-Prince; he reportedly was detained for seven days during which time he was subjected to torture so severe that he required hospitalization upon his release. 39/

95. On 14 June 1994, three journalists from the American television company NBC were arrested and briefly detained at police headquarters in Port-au-Prince. 40/

96. On 1 August 1994, Reynold Georges, a former Senator, was shot and badly wounded in Port-au-Prince. The attack was reportedly carried out by a carload of police and soldiers firing automatic weapons. Although in need of medical treatment, he is said to have feared for his safety should he go to hospital, knowing that the authorities were searching for him and his family. The attack came only days after Reynold Georges had criticized General Cédras and the military authorities on CNN television news and in the foreign press. When his wife denounced the attack against her husband on Haitian radio, she was accused of "provocation" and "invited" to present herself at government headquarters. The entire family has gone into hiding. The family's house was subsequently raided and ransacked by military personnel on 7 August and their maintenance man, Gesnère Hubert, detained. 41/ The Special Rapporteur has also received reports that several people in Les Cayes were arrested for listening to Voice of America broadcasts, and that two regional radio stations were prohibited from broadcasting Voice of America information programmes.

97. Perhaps most illustrative of the attitude of the de facto authorities to limit freedom of opinion and expression was their decision to expel the International Civilian Mission, in order that there would be no witness to the human rights violations in Haiti and no one to report thereon.

98. Such actions are contrary to international norms and constitute violations of article 19 of the Universal Declaration of Human Rights; article 19 of the International Covenant on Civil and Political Rights; article 14 of the American Convention on Human Rights; and article 28 of the Haitian Constitution.

III. THE INTERNATIONAL CIVILIAN MISSION

99. Based on resolutions by the General Assembly and the Organization of American States and on a request by the President of Haiti, Jean-Bertrand Aristide, the International Civilian Mission in Haiti (MICIVIH) was established in April 1993 with the main objective to verify, throughout the territory of Haiti, respect for the human rights set forth in the Haitian Constitution and in international instruments to which Haiti is a party. Until October 1993, 11 teams were deployed throughout the country totalling some 350 persons. However, the human rights situation worsened considerably following the signing of the Governors Island Accord in New York in June 1993, and the Mission's observers faced increasingly threatening behaviour from members of the Forces Armées d'Haiti (FAD'H) and their attachés (civilian auxiliaries) in the first part of October 1993, in particular following the incidents which, on 11 October 1993, prevented the deployment of a contingent of the military component of the United Nations Mission in Haiti (UNMIH). On 15 October 1993, the Special Representative of the Secretary-General and OAS Special Envoy, Mr. Dante Caputo, recommended the suspension of operations and evacuation of non-essential personnel. The office of the Special Representative of the Secretary-General was, therefore, reduced to a core group of essential personnel, mostly administrative. The members of MICIVIH were relocated to Santo Domingo on 15 and 16 October 1993.

100. In January 1994, a first group of observers returned to Haiti. Twenty-two United Nations and OAS observers returned to Port-au-Prince on 26 January, then

6 others on 2 February and 10 on 13 April (A/48/931, para. 11). By 24 May, there were 70 observers in Haiti and as at 13 July, there were a total of 101 observers.

101. On 31 January 1994, the first office of the International Civilian Mission was reopened and was responsible for investigating violations taking place in the central city, in Carrefour and Pétionville. On 24 May 1994, the Mission opened a second office in Port-au-Prince, covering northern Port-au-Prince, including Cité Soleil.

102. While the observers were concentrated in the metropolitan area of Port-au-Prince, teams travelled frequently to the provinces to evaluate the human rights situation there, or to investigate specific cases of violations brought to their attention.

103. Since their return in January, members of the International Civilian Mission have been subjected to threats and intimidation from armed civilians as well as from the military. Military personnel hindered the Mission's ability to carry out its duties, most notably with respect to granting them access to detention centres and to certain areas where serious human rights violations had been reported.

104. At Hinche, in the central plateau, where an MICIVIH team went during the week of 23 March 1994, acts of intimidation and aggression were committed, vehicles were hit and insults were launched by FRAPH demonstrators at the observers, who were forced to return to Port-au-Prince in the middle of the night. On 19 April, in a Port-au-Prince police station, verbal violence and death threats were directed at two observers by attachés and a sergeant (ibid., para. 19).

105. On 7 June 1994, two United Nations security officers were stopped by a group of heavily armed civilians who had constructed a road block on the road leading to Pétionville from Port-au-Prince. The security guards were forced to turn over their portable radios as well as their service arms, and one of the attachés destroyed the radio transmitter which was mounted on the vehicle. At the same time, two local employees of the International Civilian Mission who were returning home after work were stopped by the same group and threatened by some 20 attachés. 42/

106. By its resolution 48/278 of 8 July 1994, the General Assembly approved the extension of the mandate of the International Civilian Mission to Haiti for one year.

107. On 11 July 1994, the de facto authorities in Haiti delivered to the Executive Director of MICIVIH in Port-au-Prince a decree of the "Provisional President" declaring the international staff of MICIVIH "undesirable" and giving them 48 hours to leave Haitian territory.

108. Consequently, in consultation with the Acting Secretary-General of OAS, the Secretary-General of the United Nations took the joint decision to evacuate the International Civilian Mission, taking into consideration the security of the personnel. The evacuation took place on 13 July 1994.

IV. CONTINUATION OF THE NEGOTIATING PROCESS, PRESSURE AND INTERNATIONAL MONITORING OF THE SITUATION IN HAITI

109. Reports submitted earlier to the Commission on Human Rights by the Special Rapporteur referred to the special interest shown by the international community in the question of Haiti and to the negotiations, pressure and monitoring that have continued in recent years. In the report submitted to the Commission on Human Rights in February 1994 (E/CN.4/1994/55), one chapter was devoted to describing and analysing the difficult negotiating process and the many attempts made by the international community to achieve a peaceful resolution of the crisis. The report described the entire process involving MICIVIH from the time when the first steps were taken towards its establishment until it had to withdraw from Haiti as a result of the worsening crisis in October 1993, when the Haitian military decided to repudiate the Governors Island Agreement and increased the frequency of human rights violations. The report also described and analysed the mandate received and the intensive mediation activities carried out with dedication and skill by the Special Envoy of the Secretaries-General of the United Nations and OAS Mr. Dante Caputo, the former Minister for Foreign Affairs of Argentina, together with the development, content and significance of the Governors Island Agreement and the subsequent New York Pact (A/47/1000-S/26297, annex). As will be recalled, as of mid-October 1993, with the forced withdrawal of MICIVIH, the military authorities' disregard of the Governors Island Agreement, the obstacles that impeded first the installation of the Government of Prime Minister designate Robert Malval and later the performance of its functions, the assassination of the Minister of Justice, Guy Malary, the violence unleashed by paramilitary gangs, the refusal of Cédras and François to abandon their posts and allow the return of President Aristide, and so forth, the negotiations were to all intents and purposes suspended and the international community, by means of resolutions of the United Nations Security Council and of the Permanent Council of OAS, was obliged to restore the sanctions which had been suspended following the signing of the Governors Island Agreement.

110. The description and analysis of the negotiating process which was summarized in the report by the Special Rapporteur in 1993 was intended to give a complete, although summary, picture of all the political and diplomatic efforts that had been made, since the coup d'état of September 1991, to achieve a negotiated resolution of the crisis. Despite all the obstacles and difficulties encountered, efforts continued throughout the period October 1993-September 1994 when, after three years of continuous negotiation and pressure and promises by the Haitian military which remained unfulfilled, the international community was finally obliged to take other measures such as those contained in Security Council resolution 940 (1994) of 31 July 1994. It must be recalled that, between June 1993 and July 1994 alone, the Security Council had adopted nine resolutions and its President had been obliged to issue 11 statements on the subject. During the same period, the matter also engaged the attention of the General Assembly and the Secretary-General of the United Nations, the Commission on Human Rights in Geneva, the General Assembly and Secretary General of OAS, the Ad Hoc Meeting of American Ministers of Foreign Affairs, the Inter-American Commission on Human Rights, the Special Envoy of the Secretaries-General of the United Nations and OAS, the Friends of the Secretary-General on Haiti, the Governments of many countries, non-governmental

organizations, and so forth. During the course of this year, the Special Rapporteur also submitted various reports to the Third Committee of the General Assembly and to the Commission on Human Rights in Geneva. A summary description and analysis of the political and diplomatic efforts made during the past year is given below.

111. In response to the events of 11 October 1993, when armed gangs of attachés and tontons macoutes, acting under the protection of the Haitian military, threatened journalists and diplomats who were waiting at the port for the first contingent of the United Nations Mission in Haiti (UNMIH) to come ashore, beat up supporters of President Aristide and, by acts of violence and intimidation, prevented the peaceful disembarkation of the members of the Mission, the Security Council, on 13 October, unanimously adopted resolution 873 (1993) by which it terminated the suspension of the sanctions set out in paragraphs 5 to 9 of resolution 841 (1993) of 16 June 1993, as of 2359 hours on 18 October. On 16 October, the Security Council also unanimously adopted resolution 875 (1993) by which it called upon all States, acting individually and collectively, to use the necessary measures under the authority of the Security Council to ensure strict implementation of the embargo on petroleum and petroleum products and on arms and related matériel, including ammunition, military vehicles and equipment, police equipment, and so forth and, in particular, to halt all maritime shipping to and from Haiti. A similar decision on Haiti was taken on 18 October by the Permanent Council of OAS which, in its resolution CP/RES.610 (968/93), recommended that the members of the Organization reimpose the embargo.

112. On 25 October 1993 the President of the Security Council issued a statement (S/26633) in which he warned that if the Governors Island Agreement were not fully implemented the Council would consider imposing measures additional to those already approved in earlier resolutions (841 (1993), 873 (1993) and 875 (1993)). On 29 October, the Secretary-General of OAS, in his turn, issued a statement in which he affirmed that the undertakings made by the Haitian military in the Governors Island Agreement remained valid and must be respected. On 30 October, in a further statement (S/26668) the President of the Security Council insisted on full compliance with the Governors Island Agreement, on the withdrawal of the military leaders and the return of President Aristide. On the same day, the Chairman of the Ad Hoc Meeting of Ministers of Foreign Affairs of OAS issued a statement in Washington condemning the failure to comply with the undertakings made by the Haitian military.

113. On 15 November 1993, the President of the Security Council issued a further statement (S/26747) in which he reaffirmed that the Governors Island Agreement constituted "the only valid framework for resolving the crisis in Haiti", reaffirmed the Council's support for President Jean-Bertrand Aristide and for Prime Minister Robert Malval and reminded the military authorities of their responsibility for the personal security and well-being of the members of the Government and the United Nations and OAS personnel performing functions in Haiti. In the same statement the President of the Council stressed that the sanctions contained in resolutions 841 (1993), 873 (1993) and 875 (1993) would remain in force until the objectives of the Governors Island Agreement had been fulfilled, including the departure of General Cédras, the creation of a new police force and the return of the legitimate President.

114. On 13 and 14 December 1993 the Friends of the Secretary-General on Haiti (Canada, France, the United States and Venezuela) met in Paris (A/48/766-S/26881, annex) to consider the situation in Haiti and to decide on ways of securing the restoration of the legitimate Government. The meeting was attended by the Special Envoy, Mr. Dante Caputo. One of the main conclusions to emerge from the meeting was the warning that if the Haitian military authorities did not honour the commitments provided for in the Governors Island Agreement by 15 January 1994, the Security Council would be requested to impose additional sanctions, including universal and mandatory imposition of the embargo already being imposed by the countries of OAS, as well as a ban on non-commercial flights from and to Haiti.

115. On 10 January 1994, the President of the Security Council issued another statement (S/PRST/1994/2) in which, on behalf of the Council, he reiterated its deep concern for the plight of the Haitian people and welcomed the arrival in Haiti of the first shipment of fuel for humanitarian purposes, reiterating that the international community would hold responsible any authorities and individuals in Haiti who might interfere with the delivery and fair distribution of that humanitarian assistance.

116. From 14 to 16 January 1994 a conference known as the Miami International Conference, on democracy as the solution to the Haitian crisis, convened by President Jean-Bertrand Aristide, was held in Miami, Florida, and was attended by President Aristide himself and also by some members of the Malval Cabinet, members of both houses of the Haitian Parliament, Mr. Evans Paul, Mayor of Port-au-Prince, representatives of the four Friends of the Secretary-General on Haiti, representatives of the Secretary General of OAS, the then Special Representative of President Clinton on the Haitian question, Ambassador Lawrence Pezzullo, a member of the Inter-American Commission on Human Rights, the Director of the International Civilian Mission (MICIVIH), Ambassador Collin Granderson, representatives of non-governmental human rights organizations, and so on. Members of the United States Congress and well-known figures such as Jesse Jackson, Charles Rangel, Taylor Branch, Major Owens and Corrine Brown also attended and participated very actively in the Conference. Your Special Rapporteur was also invited, and attended the meetings of the Conference. During the meetings, various aspects of the crisis in Haiti were studied, and in particular the human rights situation. Possible alternatives for resolving the political crisis in the light of the terms of the Governors Island Agreement and the New York Pact were reviewed. Finally, consensus was reached on the need to continue the discussions aimed at seeking a negotiated way out of the crisis, to condemn the military government for its violations of human rights, to keep the question of Haiti as a matter of high priority on the agenda of the United Nations and OAS, to seek a humanitarian solution to the problem of the boat people, to step up economic and political sanctions against the de facto Haitian government, and to request full and prompt compliance with the Governors Island Agreement and the New York Pact.

117. In late January, February and March 1994 the so-called "Parliamentarians' plan" appeared. It immediately ran into strong resistance and various difficulties, and had finally to be abandoned. It consisted of a series of proposals intended to "find a way out of the impasse", and involved the following specific proposals: the appointment of a new Prime Minister, the

departure of the Commander-in-Chief of the Armed Forces of Haiti, a vote by Parliament on an amnesty law and the adoption, after the installation of the new Government, of a law concerning the establishment of a police force, and the return of President Aristide to Haiti. The Parliamentarians' Plan found no support in some countries, including those in the group of Friends of the Secretary-General on Haiti. The Plan was also rejected by President Aristide himself, a position transmitted by the Secretary-General to the Security Council in his report of 29 April 1994 (A/48/931).

118. On 23 March 1994 the Security Council unanimously adopted resolution 905 (1994), in which it extended the mandate of the United Nations Mission in Haiti (UNMIH) until 30 June 1994 and requested the Secretary-General to report to the Council at such time as, in his opinion, conditions existed in Haiti for the deployment of UNMIH for purposes consistent with paragraph 5 of the Governors Island Agreement, and also to make specific recommendations on the composition of UNMIH and the scope of its activities.

119. While all these attempts were being made to find a negotiated solution to the crisis, violations of human rights continued and intensified. Between the end of January and the beginning of April 1994 alone, MICIVIH issued 11 press releases on the deterioration of the human rights situation and the increase in extrajudicial executions and suspicious deaths, arbitrary arrests and secret detentions. On 23 April, with the open complicity and participation of military and police forces, members of FRAPH, consisting of attachés and tontons macoutes, massacred more than 20 people in the town of Gonaïves, leading to a further wave of protest throughout the international community.

120. On 6 May 1994 the Security Council unanimously adopted resolution 917 (1994), which broadened the sanctions imposed on Haiti and established that (a) all States must deny permission to any aircraft to take off from, land in, or overfly their territory if it is destired to land in, or has taken off from, the territory of Haiti; and that (b) all States must prevent the entry into their territories of officers of the Haitian military, including the police, and of persons holding governmental positions in the de facto administrations since the coup d'état of September 1991, and their immediate families. It also (c) urged all States to freeze the funds and financial resources of all those persons; and lastly (d) called for an extension of the embargo to all commodities and products destined for or dispatched from Haiti, with certain exceptions for humanitarian reasons.

121. In the light of reports from Haiti that Haitian members of Parliament opposed to the restoration of democracy were planning to appoint and swear in Emile Jonassaint, the President of the Court of Cassation, as the new "President of the Republic", the Friends of the Secretary-General on Haiti met on 11 May and prepared a draft resolution that served as the basis for a statement issued by the President of the Security Council (S/PRST/24) strongly condemning the attempt to replace the legitimate President and stressing that participants in illegal governments in Haiti were subject to the measures provided for in Security Council resolution 917 (1994) concerning travel restrictions and freezing of funds and financial resources in foreign banks. Once the new "President" was appointed, the international community made it known that it would not recognize him as such.

122. The sanctions imposed by virtue of Security Council resolution 917 (1994) entered into force at 2359 hours on 21 May 1994, after consultations between the Secretaries-General of the United Nations and OAS.

123. On 9 June 1994, the Ad Hoc Meeting of Ministers of Foreign Affairs of OAS, held in Belén do Pará on the occasion of the OAS General Assembly, adopted resolution MRE/RES.6/94 entitled "Call for the return to democracy in Haiti", by which, among other provisions relating to the human rights situation in Haiti, it was resolved to call on all member States to support measures by the United Nations to strengthen UNMIH in order to assist in the restoration of democracy through the professionalization of the Armed Forces and the training of a new police force, the maintenance of essential civic order and the protection of the personal security of the personnel of international and other organizations involved in humanitarian efforts, and in the monitoring and safeguarding of human rights in Haiti.

124. On 17 June 1994, MICIVIH reported in a press release that the repression had recently increased and that all kinds of atrocities, violations and assassinations continued to be committed, and gave the names and ages of the victims.

125. On 30 June 1994, the Security Council unanimously adopted resolution 933 (1994) sponsored by the countries comprising the Friends of Haiti (Argentina, Canada, France, the United States and Venezuela), in which it was decided to extend the mandate of UNMIH until 31 July 1994 and the Secretary-General was requested to report to the Council no later than 15 July 1994 with specific recommendations on the strength, cost and duration of UNMIH, appropriate to its expansion and deployment, and the means by which UNMIH could, in due course, assist the democratic Government of Haiti, provide security for the international presence, senior Haitian government officials and key installations, and assist in assuring public order and in the holding of legislative elections which, as stipulated by Haitian law, should be called by the legitimate Government at the end of 1994.

126. Unexpectedly, on 5 July 1994, without anything special having occurred, the de facto authorities in Haiti sent MICIVIH a communication demanding the suspension of its activities, and on 11 July, they delivered to the Executive Director of MICIVIH in Port-au-Prince a decree of the "Provisional President" declaring the staff of MICIVIH "undesirable" and giving them 48 hours to leave the country. As soon as that "decree" was issued, the Secretary-General of the United Nations, Boutros Boutros-Ghali, in consultation with the Acting Secretary-General of OAS, taking into consideration the security of the staff of MICIVIH ordered their evacuation and then, in a letter dated 12 July 1994 addressed to the President of the General Assembly and the President of the Security Council, stated as follows: "... I deplore the fact that, despite the efforts of the international community, the de facto authorities in Haiti, who continue to flout their commitments under the Governors Island Agreement, have now stopped the monitoring of the violations of human rights and political freedoms which are taking place in the country".

V. RECENT DEVELOPMENTS IN THE CRISIS

127. The decree of 12 July 1994 declaring the members of MICIVIH "undesirable" was further evidence of the Haitian military's disdainful and arrogant attitude towards the international community, as well as their intention to continue and even intensify their policy of repression against the followers of President Aristide, and to go on violating the Haitian people's most basic human rights. That attitude had already been demonstrated, for instance by obstruction of and interference with the work of MICIVIH, whose members had in some cases been harassed and even maltreated; the "demonstrations" against Special Envoy Dante Caputo organized by paramilitary bodies; the flouting of the commitments assumed under the Governors Island Agreement and the New York Pact; the various difficulties and stumbling-blocks devised to prevent Prime Minister Robert Malval and the Cabinet members appointed by him from assuming their posts and fulfilling their governmental responsibilities; the assassination of Guy Malary, the Minister of Justice, and the failure to punish his murderers; the continuing violation of human rights by bands armed and protected by the military; and the appointment of a "provisional President" to replace the legitimate President.

128. The international community, which had for a long time been making every effort to seek a negotiated resolution of the crisis, once again found itself frustrated when the "provisional President" (appointed and controlled by the military in violation of the Constitution, and thus lacking recognized authority) "decreed" that the staff of MICIVIH were "undesirable" and gave them just 48 hours to leave the country. At the 3403rd meeting of the Security Council on the same day, 12 July, the President of the Council issued a statement (S/PRST/1994/32) in which the Council condemned the decision of the illegal de facto regime and the military leadership in Haiti to declare MICIVIH undesirable. The Council emphatically rejected this attempt by the de facto regime and the military authorities once again to defy the will of the international community, which it saw as provocative behaviour directly affecting the peace and security of the region.

129. On 26 July 1994, the Secretary-General submitted another report to the Security Council on the question of Haiti (S/1994/871) in which he emphasized three points in particular: (a) as regards the human rights situation, he pointed out that after the expulsion of the MICIVIH staff the abuses being committed against Haitians had continued and even escalated; (b) as regards the humanitarian situation, he said that it was daily becoming more difficult, particularly for the poorer sectors of the population, and cited indicators that pointed to an alarming situation in the country: a sharp increase of the all-prices index, an unemployment rate of 50 per cent of the active population, an increasing incidence of certain illnesses like diarrhoea, malaria, typhoid, acute respiratory infections and measles, and other such factors; and (c) as regards the sanctions imposed on the government, he indicated that further to the measures already taken, France had decided to suspend its commercial flights to and from Haiti as from 1 August 1994.

130. On 27 July 1994 the third addendum to the interim report by MICIVIH entitled "The situation of democracy and human rights in Haiti" was issued (A/48/532/Add.5) giving a detailed account of the most serious violations of the

right to life; violations of the right to integrity and security of the person (enforced disappearances and secret detention centres, arbitrary arrests, illegal detention, torture and cruel, inhuman and degrading treatment); politically motivated rape, particularly the rape of wives and daughters of supporters of President Aristide, including 11 minors and a young pregnant woman; the complete denial of the rights to freedom of expression and association; extrajudicial executions and suspicious deaths, like the massacre at Raboteau in Gonaïves, where paramilitary gangs murdered at least 20 persons and threw the corpses into the sea. The Mission also reported, inter alia, on internally displaced persons and violations of the rights of children; on intimidation of members of the Mission; and on obstruction of the observers' freedom of movement.

131. After the evacuation of the MICIVIH staff and in the light of the reports from Haiti indicating increased repression, President Jean-Bertrand Aristide on 29 July 1994 addressed a letter to the Secretary-General through the Permanent Representative of Haiti to the United Nations, denouncing "an alarming deterioration of the human rights situation in Haiti and a dramatic increase in the suffering of the Haitian people, forcing them to seek refuge outside the country" and calling upon the international community "to take prompt and decisive action, under the authority of the United Nations, to allow for the full implementation of the [Governors Island] Agreement" (S/1994/905, annex).

132. At its 3413th meeting, on 31 July 1994, the Security Council adopted resolution 940 (1994), which inter alia reaffirms earlier resolutions; recalls the terms of the Governors Island Agreement and the New York Pact; condemns once again the conduct of the illegal de facto regime, which continued to disregard those agreements and refused to cooperate with efforts by the United Nations and OAS to bring about their implementation; expresses concern over the significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal de facto regime of systematic violations of civil liberties, the desperate plight of Haitian refugees and the recent expulsion of the staff of the International Civilian Mission; takes note of the letter of President Aristide transmitted on 30 July 1994 by the Permanent Representative of Haiti to the United Nations (S/1994/910); reaffirms that the international community's goal remains the restoration of democracy in Haiti and the prompt return of the legitimately elected President, within the framework of the Governors Island Agreement; recalls Security Council resolution 873 (1993) confirming the Council's readiness to consider the imposition of additional measures if the authorities in Haiti continue to impede the activities of UNMIH or fail to comply with its relevant resolutions and the provisions of the Governors Island Agreement; recognizes the unique character of the situation in Haiti and its deteriorating, complex and extraordinary nature, requiring an exceptional response; determines that the situation in Haiti continues to constitute a threat to peace and security in the region; and thus, "Acting under Chapter VII of the Charter of the United Nations, authorizes Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, ... the prompt return of the legitimately elected President and the restoration of the legitimate authority of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governors Island Agreement ...". In other words,

the Security Council authorized the establishment of a multilateral military force formed by States Members of the United Nations whose task was to restore the legitimate Government and to ensure its security for a reasonable time.

133. On the night of 31 July 1994, in reaction to Security Council resolution 940 (1994), the "provisional President" decreed a state of seige, in an attempt, in the words of the Secretary-General in his report of 26 August 1994 to the Security Council (S/1994/1012), to "give the semblance of a legal foundation to further restrictions of public freedoms". On 1 August 1994, the Ministry of Justice asked the government commissioners to initiate prosecution of citizens who had called for revolt or foreign invasion, and on 4 August, action was initiated "against Mr. Jean-Bertrand Aristide and Mr. Fritz Longchamp, guilty of the crime of high treason for having addressed to the United Nations ... letters which served as the basis for that Organization's resolution 940 (1994) ...". The de facto military authorities took drastic measures to curb freedom of the press, establishing censorship, forbidding publication without prior authorization of statements issued by foreign embassies or press services, and arresting some journalists and expelling others. Systematic violation of human rights continued, and in the month of July 1994 alone, according to Plate-Forme des Droits Humains, it reached alarming proportions. There were 41 cases of extrajudicial executions, 200 cases of arbitrary arrest, 76 cases of inhuman and degrading treatment, and 150 cases of searches and various forms of intimidation.

134. With the adoption of Security Council resolution 940 (1994), political pressures multiplied and it was expected that there would be preparations for possible multilateral political and military action to be carried out under United Nations auspices in Haiti. Actually, the military operation began to be mounted basically by the Government of the United States, probably in the hope of reasonable and active participation by other Member States which had also supported resolution 940 (1994), or which, while not Security Council members, had been in favour of the idea of imposing stronger sanctions. In the end, however, practically the entire force for the military action, especially in the first phase of the invasion, was a United States force. This eventually created particular difficulties in the course of the process, as will be seen below. Resolution 940 (1994) had also made provision for organizational aspects of UNMIH, setting out its functions and responsibilities as well as arrangements for the individual and collective safety of its members.

VI. THE DEBATE OVER MULTILATERAL POLITICAL AND MILITARY ACTION TO RESTORE THE LEGITIMATE GOVERNMENT IN HAITI

135. The draft of resolution 940 (1994) (S/1994/904) gave rise to an important discussion in the Security Council in which not only Council members but also representatives of countries of the Americas which were not members of the Council took part: Cuba, Mexico, Uruguay and Venezuela expressed their opposition to any action involving the use of force, while Haiti and Canada voiced their approval. Finally, the resolution was adopted by the Council at its 3413th meeting by 12 votes in favour, i.e, Argentina, Czech Republic, Djibouti, France, New Zealand, Nigeria, Oman, Pakistan, Russian Federation,

Spain, United Kingdom of Great Britain and Northern Ireland and United States of America, with 2 abstentions, Brazil and China, 1 member, Rwanda, absent.

136. Once resolution 940 (1994) had been adopted and the United States had embarked on consultations and preparations for its implementation, doubts, comments and arguments began to be heard about the actual nature of the resolution and its scope, legitimacy and implications. In the United States Congress, in the administration, among the public, in the media, and so on, there was a wide-ranging debate about the involvement of the United States at the head of the multilateral military operation in Haiti. Opinion polls, showing a majority against United States military action, were published. Meanwhile France and Canada, which are members of the group of Friends of the Secretary-General on Haiti, supported the Security Council decision but announced that they would not take part in what had been described as the first phase of the operation, i.e., the military invasion operation. Brazil and the Spanish-speaking countries of the group of Latin American States, probably with the sole exception of Argentina, expressed their reservations about what they regard as intervention in internal affairs, seeing it as a breach of the principles of sovereignty and self-determination of peoples by which the countries of the region set particular store, even though in this case they recognized that the aim was to remove from power a regime condemned by the entire international community as a violator of the human rights of the Haitian people, and to restore the legitimate Government. Some Governments, like that of Venezuela, proceeding from the assumption that all means of persuasion had not yet been exhausted, took or supported initiatives such as dispatching a mission to hold further talks with the Haitian military authorities in a final attempt to convince them of the need to relinquish power, hand over peacefully to the legitimate authorities and thus avert the joint military action approved by the Security Council. The majority of the English-speaking Caribbean countries fully supported the terms of the resolution and undertook to cooperate in the subsequent phases of the operation, especially in the creation and deployment of the police and public order force once the initial military invasion phase had been completed.

137. For seven weeks, from 31 July, when resolution 940 (1994) was adopted, until 17 September 1994, when the Port-au-Prince Agreement between the military and the Carter Mission was signed, military manoeuvres were carried out, wide-ranging reports and statements about the preparatory activities were published, direct and indirect messages were sent to the Haitian military giving them an opportunity to set down and leave the country, and so on. The intention behind this barrage of publicity was clear. The United States Government was using it to bring "psychological pressure" to bear in order to compel acceptance of a negotiated solution, but the Haitian military, aware of the political difficulties that a costly operation heavily opposed by public opinion would create for President Clinton, resisted the pressure and stayed in power. At one point they even refused to receive the Ambassador of the United States, who was reported to be bringing a final message from the President. On Thursday, 15 September 1994, in a television address, President Clinton announced that the United States Government stood ready to embark on a military operation to remove the military leaders from power and restore the legitimate government of President Aristide. In his address, the President summed up the grave human rights situation in Haiti and stressed that the "dictators" must leave or would

be forced from power by the United States troops, which would invade the country in a matter of days. It was at this juncture, when all diplomatic means of recourse seemed to have been exhausted, that what was known as the Carter Mission took place. The Mission marked a turning-point. The United States reached an agreement with the Haitian military, invasion and military confrontation were averted - although the United States troops proceeded to land - and preparations began for the handing over of power from the de facto authorities to the legitimate Government.

138. After the adoption of resolution 940 (1994), the de facto government of Haiti, in addition to decreeing a state of siege and introducing strict press censorship, initiated a programme to enlist and train recruits for combat, mobilized some sectors of the population, in many cases under threat, and launched a nationalistic propaganda campaign in the press and on radio and television appealing to the people to "combat the foreign forces". Meanwhile it continued to spread terror among the defenceless civilian population in a renewed wave of human rights violations. It was not until the United States Government, with the wide publicity given to all the preparations for the invasion and with President Clinton's strongly worded speech, made it clear that the point of no-return had been reached that the Haitian military opened the way for talks to begin with a view to reaching a political agreement. The agreement was reached on Sunday, 18 September, when the aircraft carrying troops bound for Haiti had already left the North Carolina air bases.

139. After the Haitian military authorities repudiated the Governors Island Agreement, in addition to the heavy pressure brought to bear with a view to ensuring their compliance with the Agreement, other means of compelling them to surrender power and restore the legitimate Government to Haiti were explored, among them the expansion of economic sanctions, cancellation of visas for military personnel and their families, suspension of international flights and closer monitoring of the border with the Dominican Republic to prevent smuggling and violations of the embargo. It transpired that for one reason or another the sanctions were inadequate. In the report submitted by this Special Rapporteur to the Commission on Human Rights in February 1994 (E/CN.4/1994/55), he recommended that the Commission should request the General Assembly and the Security Council that the sanctions against the Haitian military regime should be maintained and intensified, and also, "if need be, that new formulas should be explored whereby the international community can help the Haitian people to liberate itself from the regime of terror to which it is subjected and assist in the establishment of a civilian Government ensuring enjoyment of the most basic human rights". Introducing the report, the Special Rapporteur stated at the time that there was no government in the country, that Haiti had practically become a "territory occupied by criminal gangs (the tontons macoutes, the attachés, the zenglendos), lawless groups who sow terror, use vehicles and weapons supplied by the military and act with absolute impunity. In Haiti, any citizen may, at any time, in any place and without any reason or explanation, be murdered, arrested, beaten or tortured".

140. Coups d'état and the overthrow of legitimate Governments, resulting in military dictatorships and violations of human rights, have been fairly commonplace in Latin America. Apart from a few relatively isolated, half-hearted and ineffectual reactions in the past, such as formal delays in

recognizing the de facto Governments or statements "deploring the events", or even more elaborate responses like the "Betancourt doctrine", which was an attempt in the early 1960s to penalize dictatorial Governments politically by refusing to recognize them and breaking off diplomatic relations as a means of pressure to help bring about democratic stability and prevent the recurrence of coups d'état, the truth is that the Governments of the hemisphere, even the democratic Governments, and the inter-American international community in general, have always ended up accepting the existence of these coercive regimes and living with them. More recently, a more important and more formally structured initiative, but one which will also need to be reviewed in the light of the Haitian experience, resulted in resolution AG/RES.1080, adopted by the General Assembly of OAS in Santiago, Chile, in June 1991, in which it decided to establish a mechanism to protect democracy through the convening of a special session of the General Assembly or an ad hoc meeting of the Ministers of Foreign Affairs to examine the situation and to take measures collectively "in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process", with provision for the possibility of imposing sanctions. This resolution 1080 is perhaps the most significant step in the inter-American normative process towards the collective defence of the stability of the democratic regimes in the region. Unfortunately, serious difficulties have been encountered in applying the resolution to specific cases.

141. The international community's unprecedented reaction in the case of Haiti prompts the following questions. Why the particular concern of the entire international community about the Haitian situation? Why have collective sanctions been imposed whereas they never have been in other similar cases in Latin America? Why have both the United Nations and OAS, and also a number of countries in the Americas and in Europe acting of their own accord, shared this concern and participated in the action taken? Why did the Security Council authorize Member States, under Chapter VII of the Charter of the United Nations, to form a multilateral force to compel compliance with the terms of the Governors Island Agreement? Were the human rights violations the international community's main reason for intervening in Haiti? What other interests were at stake?

142. Answering these questions is no easy matter, particularly because both the letter and the spirit of Security Council resolution 940 (1994) involve different and even conflicting political, legal and moral values and principles. The countries of Latin America, for example, have traditionally been categorical in their defence of the principle of non-intervention, and continue to take a very strong position in that regard. They rightly cite the bitter lessons of history, among them that of Haiti, where the occupation from 1915 to 1934 was followed by serious internal conflicts, political instability and harsh dictatorships. On the other hand, there has been much discussion in recent years among international organizations, theorists and experts in international law, and human rights and humanitarian organizations about what has been termed the "right to intervene" or, to be more precise, the "right to intervene on humanitarian grounds". In a changing world fraught with social and political difficulties, this debate in turn has sparked off a complex controversy over the contradictions between the value of international law and the value of international ethics, between the principle of non-intervention in the internal affairs of States and the right of individual victims and even of peoples to be

protected, rescued or helped by the international community when, as in the specific case of Haiti, it is the Government itself that is systematically committing the most appalling crimes against the population.

143. It has been pointed out that the Charter of the United Nations establishes the principle of the defence of peoples and that, whereas before 1945 international law did not authorize intervention, since the protection of civil liberties and human rights in general was seen as an internal matter falling within the sole jurisdiction of each State, the Charter, accepted at the time by the Member States and subsequently by all the other States that joined the United Nations, replaced the old interstatal law governing relations of interests between States by a new suprastatal law based on universal values and rights that belong to all human beings, without distinction of any kind. Morally it would be unacceptable to claim, let alone accept, that sovereignty might be invoked to justify killings, disappearances, torture, persecutions, arbitrary arrests, or the subjugation of peoples. Today, there is greater, broader and more effective international solidarity, reinforced by the wide and rapid circulation of information, historical experience, the development of the new international humanitarian law, a heightened awareness of the universal values of solidarity, and the international community's growing legal and moral obligations. This has led to the adoption, existence, enforcement and observance of treaties, conventions, covenants and other international human rights instruments which create legal obligations for States vis-à-vis their citizens but also vis-à-vis the international community. Meanwhile, it is widely accepted that the systematic violation of human rights in any country or region constitutes in itself a threat to internal and international peace. The Universal Declaration of Human Rights itself states that human rights must be protected "if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression".

144. Experience shows that not all Governments are legitimate, nor do they always act legitimately; that often, instead of complying with their fundamental obligation to protect their citizens and ensure their well-being, they do the opposite and become the greatest violators of their rights. This, ultimately, as we know, is the reality on which the international protection of human rights is based. History, not only in the distant past but also in more recent times, is full of examples - and Latin America has witnessed many in the past few decades - of dictatorial Governments that have committed all kinds of crimes and have succeeded in doing so with impunity, behind the screen of sovereignty.

145. The question of Haiti and the approach which was finally formulated in resolution 940 (1994) may constitute the starting-point for a new conception of political relations among States, between them and their peoples and, in turn, between States together with their peoples and the organized international community. This is not surprising, because in the specific case of Haiti, even though doubts and criticisms were expressed about the legal foundations of resolution 940 (1994), there was not a single dissenting voice as regards its moral foundations. In a situation in which new trends in human rights, humanitarian assistance and international ethics have opened up new horizons and have acquired greater importance, and at a time when the international community has been faced with new obligations and new actors have become involved in international law, there seems to be a need to explore and devise more up-to-

date methods of settling international conflicts of this kind. One of these methods should be to strengthen the international protection of human rights in practical terms through a system of collective sanctions against Governments that systematically violate and flout them. Relevant to this issue are certain binding obligations incumbent upon the international community that are expressly specified in the Charter of the United Nations, the charters of regional political systems and in the conventions, declarations, resolutions and other international instruments dealing with human rights.

146. Apart from the discussion on the legal and moral foundations of resolution 940 (1994), the practical implementation of its provisions has revealed points of detail that will have to be clarified in this and other similar cases that might arise in the future. For example, important points like the real meaning of such terms as "international community", "multilateral military force" and "collective intervention", will need clarifying. After the agreement with the military and with "provisional President" Jonassaint as a result of the Carter Mission, there was much speculation as to whether the force that landed in Haiti is in fact a multilateral force acting on behalf of the international community and whether the operation can be called collective intervention. It has rightly been stated that far more clear-cut safeguards will have to be developed and established within the United Nations and the regional organizations in the future in order to avoid or prevent distortions in the decision-making and decision-enforcement process. The aim would, for instance, be to dispel any doubts that might arise, as they have done in this case, when a theoretically multilateral force turns out in practice to be the political and military force of a single country, or made up for the most part of forces of a single country. Such doubts undoubtedly have created difficulties in this particular case. The Carter Mission ended on 18 September with an agreement whose terms were worked out without any consultation with the Security Council, the other competent international bodies involved in the crisis, the Special Envoy of the Secretaries-General of the United Nations and OAS, or the legitimate Government of Haiti. The reactions were not slow in coming, one being the immediate resignation of Mr. Dante Caputo, Special Envoy of the Secretaries-General of the United Nations and OAS and former Argentine Minister for Foreign Affairs. In addition, on 21 September 1994, the Constitutional Government of Haiti stated, in a note verbale to the Permanent Missions to the United Nations, that it had not been consulted on the signing of that agreement, to which it could not be considered a party since it reflected neither the view nor the will of the Haitian people.

147. Now that military invasion and armed confrontation between the forces of the international community and the Haitian military have been averted, and with a view to protecting human rights when the legitimate Government is reinstated, new questions have arisen. For example, some highly sensitive issues remain to be clarified, such as the nature and scope of the future amnesty law, an issue which Europe and the Americas have approached and resolved differently. In Europe an international tribunal was set up recently for the prosecution of persons responsible for crimes committed during the civil war in the former Yugoslavia, while in the cases that have occurred in the Americas the prevailing position has been pardon and reconciliation, subsequently embodied in what the international human rights community has called "impunity laws". As we are aware, this question of amnesty laws also raises legal problems that are still

being debated, involving on the one hand, the action and competence of international human rights bodies and, on the other, action by States that have ratified international human rights conventions or, as in the case of some 20 States in the Americas, have voluntarily accepted the jurisdiction of the Court, or have subscribed to the procedures for denunciation or individual communications such as the procedure provided for in the Optional Protocol to the International Covenant on Civil and Political Rights. In the case of Haiti it must not be forgotten that this controversial issue of amnesty was covered by the Governors Island Agreement and the question of compensation for victims was provided for in the New York Pact.

VII. CONCLUSIONS

148. In its resolution 1994/80 the Commission on Human Rights expressed its concern about the persistence and worsening of the human rights situation in Haiti and about the increase in acts of violence, drew the attention of the international community to the fate of the Haitian refugees, called upon the States members and other international organizations to intensify their humanitarian assistance, emphasized the importance of cooperation of the International Civilian Mission, OAS and the Special Rapporteur and requested the Special Rapporteur to submit a provisional report to the General Assembly at its forty-ninth session and a final report to the Commission on Human Rights at its fifty-first session.

149. Throughout 1994, the international community closely monitored the human rights situation in Haiti as reflected in the large number of meetings, resolutions, statements and reports of: the Secretary-General, Security Council, General Assembly and Commission on Human Rights of the United Nations; the Secretary General, General Assembly and Permanent Council of OAS; the Inter-American Commission on Human Rights, the United Nations/OAS International Civilian Mission, the Friends of the Secretary-General on Haiti, the Special Envoy of the Secretaries-General of the United Nations and OAS, the Special Rapporteur, non-governmental organizations, and so on.

150. During the period covered by this report, the human rights situation in Haiti continued to be a cause of serious concern. The Haitian military and police and the paramilitary and civilian forces controlled by them committed all kinds of abuses in the towns and rural areas. In addition to extrajudicial executions, assassinations, disappearances, torture, ill-treatment, arbitrary arrests, threats, harassment, and beatings, there were also many rapes of women, including minors and pregnant women and wives of opponents of the Government, serious violations of the rights of children, limitation of the freedom of expression, assembly and movement, and so on. The International Civilian Mission in Haiti, which had been evacuated in October 1993, was not able to return until February 1994 and even then was limited to a small portion of its original strength; the fact that it could operate only in the capital of the country diminished its ability to act and provide information. Notwithstanding these limitations, it continued to work with great professionalism and dedication and produced detailed reports that were used as a basis for the decisions taken by the policy-making bodies of the United Nations until

July 1994, when it was expelled from the country by the "decree" of "provisional President" Jonassaint.

151. The military not only used various means to prevent President Aristide from returning and the legitimately appointed Prime Minister Robert Malval and his cabinet from fulfilling their functions but also, in May 1994, ignoring all the international community's appeals and recommendations, it appointed a new "provisional President", whose investiture was of course never recognized by the United Nations or by other international bodies and Governments. It was this "President" appointed by the military who "decreed" the state of siege following the adoption of Security Council resolution 940 (1994).

152. Throughout 1994, economic and other sanctions mandated by the United Nations Security Council, the Permanent Council of OAS and the Ad Hoc Meeting of OAS Ministers of Foreign Affairs were imposed against the Haitian government. Although the sanctions admittedly caused problems for the de facto regime, they were not enough to force it to honour its commitments and to surrender power. It required other measures, including military action as provided for by Security Council resolution 940 (1994) and an imminent invasion to bring the Haitian military to the negotiating table and to bring about a political settlement.

153. Security Council resolution 940 (1994) has been perceived as the point of departure of a new concept of political relations between the international community and States as far as the international protection of human rights is concerned.

154. The agreement concluded between the Government of the United States and the Haitian military as a result of the Carter Mission in turn raises new questions with respect to sensitive issues such as amnesty for agents of the State accused of human rights violations, the scope, nature and advisability of such amnesty or the limits and scope of unilateral decisions taken by States once they have undertaken to cooperate in the implementation of resolutions of the Security Council or of other United Nations bodies or regional political systems.

VIII. RECOMMENDATIONS

155. The following are the recommendations of the Special Rapporteur:

(a) That the Commission on Human Rights should condemn once again the continued and systematic violation of the human rights and fundamental freedoms of the Haitian people by the de facto military regime;

(b) That the Commission on Human Rights should express its satisfaction at the consistent effort of the international community to resolve the question concerning Haiti, as reflected throughout the year by the many meetings, resolutions, statements and reports of the Secretary-General, the Security Council, the General Assembly and other United Nations bodies; the General Assembly and Permanent Council of OAS; the Special Envoy of the Secretaries-General of the United Nations and OAS; the Ad Hoc Meeting of Ministers of Foreign Affairs of OAS; the Inter-American Commission on Human Rights, the

International Civilian Mission (MICIVIH), the Friends of the Secretary-General on Haiti and other international organizations;

(c) That the Commission on Human Rights should express its satisfaction at the cooperation established between various bodies of the United Nations and of the inter-American system with the objective of helping to resolve the Haitian political crisis, implement the sanctions against the de facto regime, restore normal democratic conditions and create a climate and conditions propitious to respect for and the safeguarding of human rights and fundamental freedoms in that country;

(d) That the Commission on Human Rights should express special gratitude to Mr. Dante Caputo, the Special Envoy of the Secretaries-General of the United Nations and OAS, for his intensive and useful work; to the International Civilian Mission (MICIVIH) for its reports; to the Inter-American Commission on Human Rights for its persistent monitoring, reporting and provision of information; and to other United Nations and OAS bodies and the Friends of the Secretary-General on Haiti, all of which have contributed to the search for a solution to the Haitian political crisis;

(e) That the Commission on Human Rights should inform all the forces, parties and sectors concerned with the management and resolution of the crisis, both within and outside the country, of their obligation to respect and to ensure respect for the human rights and fundamental freedoms of the Haitian people; that, without prejudice to the efforts to create a climate of peace and national reconciliation, they should facilitate and assist in the search for a just solution in respect of the claims of the many victims and their families; and that to the extent possible, opportunities should be created to conduct and complete, without hindrance, inquiries which would help to establish and make public the responsibility of individuals;

(f) That the Commission should request the United Nations High Commissioner for Human Rights, with the active participation of United Nations bodies and the inter-American system, to devise and implement a plan setting out short-, medium- and long-term goals for institution-building and for promotion, monitoring, provision of information and supervision in order to help the legitimate Haitian authorities comply with their international, constitutional and legal obligations with respect to human rights and fundamental freedoms;

(g) That the Commission on Human Rights should reconfirm the provisions of its other earlier resolutions on Haiti to the effect that a resolution of the political crisis in Haiti, with the removal of the de facto regime and the return of the legitimate authorities, is only the beginning of a process which should culminate in the structural and cultural changes necessary to promote and ensure respect for human rights, including in particular the following: improvement of the administration of justice and of the prison system; the updating of civil and criminal legislation; the separation of the police from the armed forces; the establishment of a civilian police force under the administration of the Ministry of Justice; the elimination and replacement of the old institution of section chiefs, a symbol of local authoritarianism; the establishment of a system of local administration based on the rule of law and democratic practices; a solution to the problem of land ownership; the genuine

separation of the powers of the State and mutual respect for the competence of its constituent elements; and the implementation of social and economic programmes to improve the deplorable living conditions of the vast majority of the population. These changes will require international, multilateral and bilateral cooperation programmes;

(h) That in view of the characteristics of the situation in Haiti and in order to facilitate respect for human rights and keep United Nations bodies apprised of the situation, international monitoring by the Commission on Human Rights should continue, cooperation should proceed in programmes under way and the question should be dealt with under the item "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories".

156. These are the recommendations submitted by the Special Rapporteur after taking up the mandate of the Commission on Human Rights and having received and processed information and studied the situation of human rights and fundamental freedoms in Haiti throughout 1994. The Special Rapporteur deems it appropriate to continue monitoring carefully the political, economic and social situation in the country and reiterates his conviction that only through aid, cooperation and international technical assistance, particularly in the fields of economic and social development and institution-building, as well as the establishment of a culture of respect for human rights, can the conditions for the future democratic development of Haiti be established.

Notes

1/ Inter-American Commission on Human Rights, "Report to the twenty-fourth regular session of the General Assembly of the Organization of American States on its on-site visit to Haiti from May 16 to 20, 1994".

2/ Time, "An island full of fugitives", 25 July 1994, p. 25.

3/ Inter-American Commission on Human Rights, op. cit.

4/ Human Rights Watch/Americas, Jesuit Refugee Service/USA, National Coalition for Haitian Refugees, "Fugitives from injustice: the crisis of internal displacement in Haiti", vol. VI, No. 10, August 1994.

5/ International Civilian Mission United Nations/Organization of American States, press release, ref.: CP/94/20, 19 May 1994.

6/ Human Rights Watch/National Coalition for Haitian Refugees, "Rape in Haiti: a weapon of terror", vol. 6, No. 8, July 1994, p. 2.

7/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/29, 6 July 1994.

8/ Haiti Insight, vol. 5, No. 4, June 1994.

9/ Amnesty International, AMR 36/21/94, 27 April 1994 and International Civilian Mission, press release, ref.: CP/94/17.

10/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/21, 23 May 1994.

11/ Federación de Trabajadores Latinoamericanos del Comercio, Oficinas y Servicios (FETRALCOS), Caracas, Venezuela, letter dated 11 July 1994 to the Director of the Centre for Human Rights.

12/ Amnesty International, AI Index, AMR 36/30/94, 20 July 1994.

13/ Ibid., AMR 36/41/94, 30 August 1994.

14/ Ibid., AMR 36/46/94, 21 September 1994.

15/ Amnesty International, AMR 36/16/94, 8 April 1994.

16/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/14, 22 April 1994.

17/ Haiti Insight, vol. 5, No. 5, Summer 1994.

18/ Amnesty International, AMR 36/26/94, 29 June 1994.

19/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/8, 21 March 1994.

20/ Haiti Insight, vol. 5, No. 4, June 1994.

21/ Amnesty International, "Haiti: on the horns of a dilemma: military repression or foreign invasion?", AMR 36/33/94, 24 August 1994.

22/ Human Rights Watch/National Coalition for Haitian Refugees, "Rape in Haiti, a weapon of terror", July 1994, p. 7.

23/ Haiti Insight, loc. cit., p. 5.

24/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/6, 17 March 1994.

25/ International Civilian Mission United Nations/OAS, CP/94/15, 22 April 1994 and Amnesty International, AMR 36/18/94, 15 April 1994.

26/ "Haiti Solidarité Internationale" and l'Agence haïtienne de presse, "Une semaine en Haiti", No. 230.

27/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/18, 4 May 1994.

28/ Ibid., Ref.: CP/94/27, 10 June 1994.

29/ Centre Haitien de recherches et de documentation, Geneva, Bulletin Hebdomadaire, No. 218.

30/ Amnesty International, AMR 36/35/94, 11 August 1994 and AMR 36/37/94, 15 August 1994.

31/ World Organization against Torture, ref.: SOS-HCDH, 16 August 1994.

32/ Amnesty International, AMR 36/38/94, 19 August 1994.

33/ Haiti Insight, loc. cit., p. 7.

34/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/28, 17 June 1994.

35/ Bento Rubiao, Centro de Defensa dos Direitos Humanos, Rio de Janeiro, Brazil, letter to the Secretary-General of 29 June 1994.

36/ United States Department of State, "Human Rights in Haiti", 13 September 1994.

37/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/13, 12 April 1994.

38/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/24, 7 June 1994.

39/ Haiti Insight, loc. cit., p. 4.

40/ Letter from "Reporters sans frontières", dated 17 June 1994.

41/ Amnesty International, AMR 36/34/94, 10 August 1994 and AMR 36/36/94, 12 August 1994.

42/ International Civilian Mission United Nations/OAS, press release, ref.: CP/94/25, 8 June 1994.